MECHEM ON PUBLIC OFFICERS, § 5, citing *Hall* v *Wisconsin*, 103 U. S. 5; *U. S.* v. *Maurice*, 2 Brock. (U. S. C. C,) 102, and numerous other cases. A contractor to carry the mails is not a public officer, and though he may be, in a certain sense, an agent of the government, those whom he employs in the execution of his contract are not government agents, and the contractor is liable to third persons for their negligence; *Sawyer* v. *Corse*, 17 Grat. (Va.) 230, 94 Am. Dec. 445; *Central R. R.* v. *Lampley*, 76 Ala. 357, 57 Am. Rep. 334; SHEARM. & REDF. NEG. (5th ed.) Sec. 118; WHARTON ON NEG. (2nd ed.) Sec. 296. Contra: *Conwell* v. *Voorheis*, 13 Ohio 523, 42 Am. Dec. 206; *Hutchins* v. *Brackett*, 22 N. H. 252, 53 Am. Dec. 248; *Foster* v. *Metts*, 55 Miss. 77, 30 Am. Rep. 504. The former is believed to be the better rule. See note to *Conwell* v. *Voorheis*, 42 Am. Dec. 208.

CORPORATION—CAPITAL STOCK—CONTRACTS TO REPURCHASE.—C, a corporation, sold certain of its capital stock to T, and executed a contemporaneous agreement to repurchase the same on the happening of a certain contingency. The contingency having happened, T made application to C to repurchase. C refused, and T brought action for damages for breach of contract. C defended on the ground that the contract was a secret agreement by the corporation to purchase its own shares and thus reduce its capital stock; that such an agreement is against public policy and void. *Held*, that unless prohibited by statute or charter, a corporation may purchase its own shares to a reasonable amount and for a legitimate purpose, the rights of creditors or stockholders not being impaired thereby. *Fremont Carriage Co.* v. *Thomsen* (1902), — Neb. —, 91 N. W. Rep. 376.

This is a case of first instance in Nebraska, and adds the sanction of one more court to what seems to be the weight of authority in the United States. The following cases and text writers sustain the view reached by the Nebraska court: *Bank* v. *Transportation Co.*, 18 Vt. 131; *Insurance Co.* v. *Swigert*, 135 Ill. 150; *Vent* v. *Spice Co.*, 64 Minn. 307; *Dock* v. *Cordage Co.*, 167 Pa. St. 370; *Trust Co.* v. *Abbott*, 162 Mass. 148; *Marvin* v. *Anderson*, 111 Wis. 387; *Hartridge* v. *Rockwell*, 1 R. M. Charlt. 260; *Cooper* v. *Frederick*, 9 Ala. 738; *Price* v. *Iron Mt. Co.* (1895), — Ky. —, 32 S. W. Rep. 267; *Blalock* v. *Kernersville*, 110 N. C. 99; *Howe* v. *Jones*, 21 Tex. App. 198. See also the following cases: *Vercontere* v. *Golden S. L. Co.*, 116 Cal. 410; *Lowe* v. *Threshing Co.*, 70 Fed. 646; *Chapman* v. *Iron C. R. Co.*, 62 N. J. L. 497; and WILGUS CASES ON CORPORATIONS 1045 and n.; THOMPSON'S COM. ON CORPORATIONS, Vol. 2, Sec. 2062; BEACH'S PRIV. CORPORATIONS, Vol. 2, Sec. 395; BOONE'S LAW OF CORP., Sec. 107; TAYLOR'S PRIVATE CORP., Sec. 135. The English rule is that a corporation cannot, without express charter or statutory authority, purchase its own stock. 7 ENG. AND AM. ENCY. OF LAW, 818; WILGUS' CASES ON CORP., 1051. The following American courts have reached the same conclusion as the English courts: *Herring* v. *Ruskin* (1899), — Tenn. Ch. App. —, 52 S. W. Rep. 327; *Coppin* v. *Greenless*, 38 Oh. St. 275; *Crandall* v. *Lincoln*, 52 Conn. 73; *Rawhide Co.* v. *Hill*, 72 Mo. App. 142; *Barto* v. *Nix*, 15 Wash. 563; *Ables* v. *Cockran*, 22 Kan. 405; *Currier* v. *Lebanon S. Co.*, 56 N. H. 262; *Barton* v. *Port Jackson*, 17 Barb. (N. Y.) 397. See also MORAWETZ PRIV. CORP., Vol, 1, Secs. 112 and 434; CLARK'S PRIV. CORP., Sec. 153; ELLIOTT'S PRIV. CORP., 333; SPELLING'S PRIV. CORP., Vol. 1, Sec. 168; THOMPSON'S COM. ON CORP., Vol. 2, Sec. 2054; WILGUS CASES ON CORP., 1048 and note. All American authorities seem to agree that a corporation may purchase its own stock to save a debt owing to the corporation. *City Bank* v. *Bruce*, 17 N. Y. 507; *Barto* v. *Nix*, 15 Wash., 563. If we recognize the fundamental principle upon which the right to exist as a corporation is granted, namely, the benefits resulting to the

public, it is difficult to see how any court can hold that a corporation can purchase its own stock, unless such right be granted to it by statute or charter. The public have a right to demand that the corporation shall have the highest possible incentive and capacity to accomplish the purpose for which it was created that the law recognizing its existence will permit. When the stock is in the hands of the stockholder, it is to his interest to see that the business is properly prosecuted, but when the stock is owned by the corporation, no such incentive exists. Therefore, we believe that the rule that the corporation cannot purchase its own stock, unless that right is granted to it by charter or statute, is the only one that can be defended upon principle. If the state intends to grant such powers to a corporation, it should signify such intention by statute or charter. It cannot be contended that to purchase its own stock is a right necessarily incidental to corporate existence.

CRIMINAL LAW—CONTEMPT OF COURT—CONCERTED ACTION TO INFLUENCE TRIAL.— In a prosecution for murder, while the attorney for the defendant was making his final argument to the jury, one hundred persons, comprising one-fourth of the audience, arose as if by concert, and left the court room. The court below found that such action had no influence upon the jury. *Held*, that such a proceeding deprived the defendant of a trial by the law of the land. *State* v. *Wilcox* (1902), — N. Car. —, 42 S. E. Rep. 536.

In this case the one hundred persons did what with proper intent they would have a lawful right to do. The right to leave a court room under ordinary circumstances is undeniable. Under many conditions many persons may leave at once, but if many combine to influence the jury by leaving in a crowd, showing their feeling for the proceeding, then the concerted action based upon the wrong intent is unlawful. Under some circumstances a large number might leave the court room without any intent to influence the jury by their departure, yet if in fact they did influence the jury, the verdict should be set aside. In such a case a lawful act would render the trial improper. While in this case the crowd did leave during the argument, yet they might have had no intent to influence the jury. Much depends on the circumstances of their leaving.

DAMAGES—SALE OF REALTY—BREACH OF VENDOR'S CONTRACT.—The defendant contracted to sell trees to the plaintiff, which in a previous suit between the same parties, had been held to be realty. The defendant having received a better offer, refused to perform. In an action for damages for breach of the contract, *Held*, that the measure of damages is the contract price, and not the difference between the contract price and the market value at the time of the breach. By the contract price is meant the purchase money actually paid and interest thereon. *Stuart* v. *Pennis* (1902), — Va. —, 42 S. E. Rep. 667.

The court in this case used the term contract price, and yet gave it the meaning of the purchase price paid. There are several rules by which the measure of damages is ascertained. One adopted by some courts is the difference between the contract price and the market value at the time of the breach. *Pumpelly* v. *Phelps*, 40 N. Y. 64; *Margraf* v. *Muir*, 57 N. Y. 155; *Doherty* v. *Dolan*, 65 Me. 87, 20 Am. Rep. 677; *Leggett* v. *Mut. Life Ins. Co.*, 53 N. Y. 394; *Baldwin* v. *Munn*, 2 Wend. 399; *Brigham* v. *Evans*, 113 Mass. 538; *Muenchow* v. *Roberts*, 77 Wis. 520, 46 N. W. 802; *Irwin* v. *Askew*, 74 Ga. 581; *Dunshee* v. *Geoghegan*, 7 Utah, 113, 25 Pac. Rep. 731: MAYNE ON DAM., 208; SEDGWICK ON DAM., Sec. 1005, 1006. The weight of authority is with *Hopkins* v. *Lee*, 6 Wheat. (U. S.) 109, in allowing the difference between the contract price and the market value as the measure of damages,